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OF COURT**

Filed Under Seal Pursuant
To 31 U.S.C. §3730(b)(2)

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31 **ATTORNEYS FOR RELATORS**

32 **UNITED STATES DISTRICT COURT
33 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

34 [SEALED],
35 *ex rel.* [SEALED],

36 PLAINTIFF/RELATORS

37 v.

38 [SEALED],

39 DEFENDANTS.

40 Case No. 5:20-cv-00202-NC

41 **REDACTED COMPLAINT -
42 JURY DEMAND FILED UNDER
43 SEAL PURSUANT TO 31 U.S.C. §
44 3730(b)(2)**

45 **DO NOT PLACE IN PRESS BOX
46 DO NOT ENTER IN PACER**

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
ex rel. SCOTT HAGEN AND
KEVIN KLIMASZEWSKI,

PLAINTIFF/RELATORS

Y.

ADobe SYSTEMS INCORPORATED,
CARAHSOFT, CDW GOVERNMENT,
LLC,
and EMERGENT LLC,

DEFENDANTS.

Case No. 5:20-cv-00202-NC

REDACTED COMPLAINT

JURY DEMAND

**FILED UNDER SEAL
PURSUANT TO 31 U.S.C. §
3730(b)(2)**

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**COMPLAINT FOR FALSE CLAIMS ACT VIOLATIONS
UNDER 31 U.S.C. § 3729, ET SEQ.**

I. INTRODUCTION

1. This action is brought by Relators Scott Hagen and Kevin Klimaszewski on behalf of the United States of America pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.* (FCA), as amended.

2. Relators allege that Defendants Adobe Systems Incorporated, Carahsoft, CDW Government LLC (“CDW-G”), and Emergent, LLC (Emergent) (together, “Defendants”) submitted or caused to be submitted false claims to the Government for computer software products and services¹ for which they charged inflated prices compared to prices charged commercial customers. These inflated prices resulted from false statements or omissions to the Government about pricing of non-Government

¹ For purposes of this Complaint, a reference to “products” includes Adobe software products and services.

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1 Adobe sales. That is, Defendants sold Adobe products to commercial customers at prices
2 significantly lower than the Government paid. In addition, for products offered through
3 the General Services Administration Multiple Award System (GSA MAS), Defendants
4 neither adjusted their pricing for the Government to reflect price reductions provided to
5 commercial customers nor did Relators observe that Defendants refunded the
6 Government for price reductions that Defendants should have retroactively provided to
7 the Government.

8 3. As a result of Defendants' false and fraudulent statements and claims,
9 Defendants knowingly submitted and caused to be submitted false or fraudulent
10 statements as well as claims for payment to the United States for Adobe products sold to
11 the United States. The Government relied on Defendants' representations in agreeing to
12 the prices it would pay for its products. Had Defendants accurately and truthfully
13 disclosed their pricing for commercial customers, the Government would not have paid
14 the prices it did.

16 4. Relators seek to recover damages on behalf of the United States arising
17 from Defendants' knowing violation of 31 U.S.C. 3729 § (a)(1)(A), (B), and (G).

18 **II. JURISDICTION AND VENUE**

19 5. The Court has original subject matter jurisdiction over this civil matter
20 pursuant to 28 U.S.C. §§ 1331 and 1345, as well as 31 U.S.C. § 3732(a).

21 6. Venue is proper, and this District Court has personal jurisdiction over
22 Defendants, pursuant to 28 U.S.C. § 1391 (b) and 31 U.S.C. § 3732(a), because
23 Defendant Adobe has its principal place of business in this District and Adobe and the
24 other Defendants transact business and committed acts proscribed by 31 U.S.C. § 3729
25 *et seq.* in this District.

26 7. Relators are "original" sources as defined by the FCA, and no allegations
27 set forth in this Complaint are based on public disclosure of allegations or transactions in
28 a criminal, civil, or administrative hearing, or from the news media.

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1 **III. PARTIES**

2 8. The United States of America is the plaintiff on whose behalf Relators
3 bring this action under 31 U.S.C. § 3729 *et seq.* The United States acts through its
4 various agencies and departments, including the General Services Administration, and
5 any government entity that purchases services or products from Defendants.

6 9. Relator Scott Hagen is a former Adobe employee who lives in Osceola,
7 Wisconsin. He worked at Adobe from April 2014 through February 2018, initially as a
8 Client Success Manager and, after two years, as a Senior Client Manager.

9 10. Relator Kevin Klimaszewski lives in Delafield, Wisconsin. From April
10 2010 to April 2015, he worked at Adobe as a Senior Enterprise Account Executive in the
11 Digital Marketing Retail Business Unit.

12 11. Adobe Systems Incorporated, a publicly traded company, is headquartered
13 in San Jose California. It is a diversified software company that offers computer products
14 and services for business and personal use. Incorporated in Delaware, Adobe is publicly
15 traded on the NASDAQ stock exchange (ticker: ADBE). Adobe does business throughout
16 the United States, and internationally as well. Its 2018 Form 10-K reported over 21,000
17 employees worldwide, approximately half of whom (about 51%) work in the United
18 States. Adobe's gross revenue for FY 2019² was \$11.17 billion.

20 12. Carahsoft, a privately held company, is headquartered in Reston, Virginia.
21 Carahsoft describes itself as "The Trusted Government IT Solutions Provider®."
22 Carahsoft's website says that it "serves as the master GSA and SLSA Schedule Partner
23 for Adobe Creative, Connect, Experience Manager, and Marketing Cloud products and
24 services, supporting an extensive ecosystem of resellers and consulting partners
25 committed to helping government agencies optimize constituent-facing applications
26 while automating back-end processes." Carahsoft offers an entire line of Adobe products

28

² Adobe's fiscal year ends on the Friday closest to November 30, resulting in a 52- or 53- week
year.

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1 and services on GSA Schedule # GS-35F-0119Y and the SLSA Contract # EN578-
2 100808/155/EE.”³

3 13. CDW Government LLC (CDW-G), with headquarters in Vernon Hills,
4 Illinois, is a subsidiary of publicly traded CDW Corporation (CDW). CDW describes
5 itself as a “leading multi-brand technology solutions provider to business, government,
6 education and healthcare customers in the United States, the United Kingdom and
7 Canada.” It is a publicly traded (NASDAQ sticker CDW) Fortune 500 company with net
8 sales in 2018 of over \$16 billion. CDW-G offers Adobe products through GSA contract
9 47QTCA18D004K. From 1999-2019, it offered products through GSA contract GS-35F-
10 0195J.

11 14. Emergent, LLC, a privately held company, describes itself as an “award-
12 winning Value Added Reseller and Open Source Systems Integrator focused on solving
13 complex business and mission challenges on behalf of the Federal, State & Local
14 Government Agencies, Commercial, and Higher Education.” Emergent is headquartered
15 in Vienna, Virginia. It identifies Adobe as a partner and it holds a GSA schedule (GS-
16 35F-0119W) across all Adobe product lines.

17 **IV. STATUTORY AND REGULATORY CONTEXT**

18 A. **The False Claims Act**

19 15. The FCA is “the Government’s primary litigative tool” for combating
20 schemes to fleece the government. S. Rep. No. 99-345, at 2 (1986). It is broadly drafted
21 to reach beyond common law fraud. *Cook Cty. v. United States ex rel. Chandler*, 538
22 U.S. 119, 129 (2003) (the FCA applies “expansively ... ‘to reach all types of fraud,
23 without qualification, that might result in financial loss to the Government’”) (quoting
24 *United States v. Neifert-White Co.*, 390 U.S. 228, 232 (1968)).

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³ <http://www.carahsoft.com/vendors/adobe>

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16. As relevant here, the FCA imposes liability on any person who

1 (A) knowingly presents, or causes to be presented, a false or
2 fraudulent claim for payment or approval;

3 (B) knowingly makes, uses or causes to be made or used, a false
4 record or statement material to a false or fraudulent claims;
5 ...or

6 (G) knowingly makes, uses or causes to be made or used, a false
7 record or statement material to an obligation to pay or
8 transmit money or property to the Government, or knowingly
9 conceals or knowingly and improperly avoids or decreases an
10 obligation to pay or transmit money or property to the
11 Government.

13 31 U.S.C. § 3729(a)(1)(A), (B) (G).⁴

14 17. As defined in the FCA, the terms “knowing” and “knowingly,” mean that,
15 with respect to information, a person “(i) has actual knowledge of the information; (ii)
16 acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in
17 reckless disregard of the truth or falsity of the information.” 31 U.S.C. § 3729(b)(1)(A).
18 Liability under the FCA requires no proof of specific intent to defraud. 31 U.S.C. §
19 3729(b)(1)(B).

20 18. The FCA further defines the term “claim” to mean any request or demand
21 for money, whether under a contract or otherwise, presented to an officer, employee, or
22 agent of the United States. 31 U.S.C. § 3729(b)(2)(A)(i). A “claim” is also a request or
23 demand for money made to a contractor or other recipient if (a) the money is to be spent
24 or used on the Government’s behalf or to advance a Government program or interest and
25 (b) if the Government provides, has provided, or will reimburse such contractor or other

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28 ⁴ All citations are to the FCA as amended by the Fraud Enforcement and Recovery Act of 2009,
Public Law 111-21.

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1 recipient for any portion of the money requested or demanded. 31 U.S.C. §
2 3729(b)(2)(A)(ii).

3 19. The FCA defines the term “obligation” to mean an established duty,
4 whether or not fixed, arising from an express or implied contractual, grantor-grantee, or
5 licensor-licensee relationship, from a fee-based or similar relationship, from statute or
6 regulation, or from the retention of any overpayment. 31 U.S.C. § 3729(b)(3).

7 20. The FCA defines “material” objectively, not subjectively, to mean “having
8 a natural tendency to influence, or be capable of influencing, the payment or receipt of
9 money or property.” 31 U.S.C. § 3729(b)(4). This “natural tendency” test has long been
10 the standard in the Ninth Circuit. *See, e.g., United States v. Bourseau*, 531 F.3d 1159,
11 1171 (9th Cir. 2008). The Supreme Court reaffirmed the natural tendency test and
12 described a holistic approach to analyzing it. *See Universal Health Services, Inc. v.*
13 *United States ex rel. Escobar*, 136 S. Ct. 1989, 1996 (2016). In determining whether a
14 false claim or statement is “capable of influencing” the Government’s decision-making
15 process, the FCA’s materiality standard looks to the effect on the likely or actual
16 behavior of the government recipient of the misrepresentation. *United States ex rel. Rose*
17 *v. Stephens Inst.*, 909 F.3d 1012, 1019 (9th Cir. 2018), *cert. denied sub nom. Stephens*
18 *Inst. v. United States ex rel. Rose*, 139 S. Ct. 1464, 203 L. Ed. 2d 684 (2019).

20 **B. GSA Multiple Award Schedule Program**

21 **1. Rationale for GSA MAS Program**

22 21. Executive agencies of the United States at times need to procure products
23 and services without going through full and open competition every time they need to
24 make a purchase. To accommodate this need, the GSA, through the Federal Acquisition
25 Service, has established a procedure to solicit, negotiate, award, and administer MAS
26 contracts to procure services and products for federal agencies. *See 41 U.S.C. § 251 et*
27 *seq.; 40 U.S.C. § 501(b)*. The MAS is also known as the “Federal Supply Schedule”
28 (FSS).

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1 22. Historically, the GSA has negotiated multiple schedules for different types
2 of procurement, e.g., schedules offering professional services, hardware, travel services,
3 and leasing of automobiles and light trucks. The GSA Information Technology (IT)
4 Schedule 70 Contract offers IT products, services, and solutions. It is the largest of all
5 schedules, includes more than 4,600 pre-vetted vendors, and had sales in excess of \$15
6 billion for FY 2018.

7 23. Under its MAS program, the GSA negotiates prices and contract terms with
8 individual vendors that will apply to subsequent orders placed for all the items that are
9 covered by the MAS contract.

10 24. The list of products or services available for purchase under an MAS
11 contract is referred to as the contract “schedule.” The pre-negotiation of the terms of sale
12 for many products and services under the MAS program saves administrative time for
13 Government agencies ordering from the MAS and for contractors wishing to sell products
14 to the government.

16 25. The MAS program also gives the Government the benefit of procurement at
17 prices associated with volume buying. *See* 41 U.S.C. § 259(b)(3). Contractors benefit
18 from the MAS program because they do not have to compete in sealed bidding or
19 negotiated acquisitions, and their products are more widely available to federal agencies
20 under one central contract, thus making it easier for the contractors to secure revenue.

21 **2. Participation in the GSA MAS Program**

22 26. The Administrator of the GSA establishes the procedures that govern the
23 MAS program, including the requirements that contractors must follow to become
24 vendors. 40 U.S.C. §§ 121(c), 501(b)(2).

25 27. Key regulations related to federal purchasing are provided in the Federal
26 Acquisition Regulations (FAR) at 48 C.F.R. §§ 1-53.303. More specifically, regulations
27 related to Federal Supply Schedules are provided at 48 C.F.R. § 8.4 and the General
28

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1 Services Administration Acquisition Manual (GSAM), which contains 48 C.F.R. §§
2 501.1-570.80.

3 28. The GSA schedule at issue here is IT Schedule 70. To sell to the
4 Government through this schedule, a vendor must respond to a Solicitation Document
5 (currently Solicitation Number: FCIS-JB-980001-B). The solicitation requires a vendor to
6 provide, among other things, a list of products, labor, and course categories along with
7 the prices or rates for the items in the various categories. *See* 48 C.F.R. § 808.402.

8 29. Interested contractors must submit responses to the solicitation according
9 to: (1) the obligations that are outlined in the Government's solicitation; (2) the FAR and
10 GSAM clauses that are incorporated into the contract; (3) any additional requirements
11 negotiated between the parties; and (4) any other general contracting requirement set
12 forth in the applicable regulations.

13 30. The contract proposal is then assigned to and evaluated by a GSA Contract
14 Specialist who collects any needed additional information, engages in negotiations,
15 analyzes the pricing and overall proposal, and submits the final proposal for review and
16 decision by the GSA. Once a vendor has been awarded a contract under a Schedule 70
17 solicitation, the rates for items or services offered in each category are deemed fair and
18 reasonable. 48 C.F.R. § 8.404.

19 31. If an MAS is awarded, the contract is assigned an FSS contract number,
20 and the contractor is required to publish relevant information, including a price list, in
21 three forms: (1) as an Authorized FSS Paper Price List schedule that can be distributed
22 and posted online; (2) on the National Acquisition Center Contract Catalogue Search
23 Tool Price List (accessible online); and (3) on the GSA *Advantage!* Electronic Price List
24 (also accessible online).

25 32. Executive agencies may then purchase services directly from vendors who
26 appear on Schedule 70, may seek Blanket Purchase Agreements⁵ (BPAs), or may issue a

27
28 ⁵ Used to fill repetitive needs for supplies or services. 48 C.F.R. 8.405-3(a)(1).

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1 Request for Quotation including a Statement of Work and method of evaluation to solicit
2 quotations from vendors.

3 **3. Required Pricing Disclosures**

4 33. The current solicitation for Schedule 70 (FCIS-JB-980001-B) states in its
5 introductory materials that awards are based on a “best value” determination defined as
6 an “expected outcome” that “provides the greatest overall benefit in response to the
7 requirement.” (“Read Me First” at 4); *see also* 8 C.F.R. § 2.101 (defining “best value”).

8 34. To achieve this goal, the MAS program is built around a vertical pricing
9 model where pricing offered to the Government from a potential vendor is compared to
10 the pricing that the same vendor offers to its commercial customers.

11 35. Schedule 70, through Solicitation Clause 52.215-21 (“Solicitation” at 64),
12 requires an offeror to prepare and submit an offer in accordance with Solicitation Clause
13 552.212-70. (“Solicitation” at 133-134.) That clause requires the production of the
14 offeror’s commercial descriptive catalog, or price list, from which any discount is
15 offered. (“Solicitation” at 133.) The clause further directs that any price list specially
16 produced for purpose of the offer must “represent a verbatim extract” from the catalog or
17 price list underlying the document. (*Id.*) The offeror must also indicate, for each item
18 offered, any concessions proposed that are not offered to commercial customers and any
19 discounts offered in response to the solicitation. 552.212-70(c)(3)-(4). (“Solicitation” at
20 133-134.)

22 36. Solicitation Clause 552.212-70(a) defines concessions and discounts as
23 follows:

24 a. *Concession*, as used in this solicitation, means a benefit,
25 enhancement or privilege (other than a discount), which either
26 reduces the overall cost of a customer’s acquisition or
27 encourages a customer to consummate a purchase.
28 Concessions include, but are not limited to freight allowance,

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1 extended warranty, extended price guarantees, free
2 installation and bonus goods.

3 b. *Discount*, as used in this solicitation, means a reduction to
4 catalog prices (published or unpublished). Discounts include,
5 but are not limited to, rebates, quantity discounts, purchase
6 option credits, and any other terms or conditions other than
7 concessions [sic] which reduce the amount of money a
8 customer ultimately pays for goods or services ordered or
9 received. Any net price lower than the list price is considered
10 a “discount” by the percentage difference from the list price
11 to the net price.

12 (“Solicitation” at 133.)

13 37. Solicitation Clause 52.215-21 also requires an offeror to submit additional
14 pricing information in a spreadsheet provided with the Solicitation or in the “Commercial
15 Sales Practice Format” (CSP) found at Figure 515.4-2 in the GSAM at § 515.408. The
16 spreadsheet is based on Figure 515.4-2. Included in the CSP is the commercial list price
17 charged for each product offered, as well as information about other proposed terms and
18 conditions. The Government further states in figure 515.4-2 that it “expects” the offeror
19 to provide information that is “current, accurate, and complete as of 14 calendar days
20 prior to its submission.”

21 38. MAS contractors who are not manufacturers of the products, but rather
22 dealers or resellers, and which do not have significant sales to the public, must provide
23 manufacturer’s information about commercial sales of the product the MAS contractor
24 sells to the federal government. (GSAM § 515.408(b) (at (5) in the Commercial Sales
25 Practice Format). Such resellers must also provide the Government written authorization
26 from the manufacturer for Government access to the manufacturer’s sales records for the
27 purpose of verifying the manufacturer’s information. *Id.*

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1 **4. Evaluation of Pricing Information**

2 39. Pursuant to GSAM § 538.270-1(a), contracting officers are required to use
3 the provided “evaluation methodology for negotiating MAS offers when the commercial
4 sales practices format is included in the solicitation (see 515.408).” That methodology
5 includes a goal that the Government “will seek to obtain the offeror’s best price (the best
6 price given to the most favored customer)” although “there may be legitimate reasons
7 why the best price is not achieved.” (*Id.*; GSAM § 538.270-1(c).)

8 40. When determining the reasonableness of a price, the contracting officer is
9 directed to “compare the terms and conditions of the MAS solicitation with the terms and
10 conditions of agreements with the offeror’s commercial customers.” (*Id.*, GSAM
11 § 538.270-1(e).) In negotiating the terms of an MAS contract, government contracting
12 officers therefore rely heavily on the accuracy and truthfulness of the information
13 provided by the offeror regarding its commercial sales.

14 41. The importance of providing truthful and accurate information is reinforced
15 by the inclusion of a penalty provision in the MAS contract—GSAM § 552.215-72,
16 which is incorporated into the Schedule 70 Solicitation at Solicitation Clause 552.212-72
17 (“Solicitation” at 136.) That penalty clause states that the Government is entitled to a
18 reduction in the price of each order issued pursuant to the MAS contract if, after the
19 formation of the contract, the Government discovers that the prices in a contract or
20 modification were inflated due to the contractor’s failure to provide current, accurate, and
21 complete information, or to update that information. (*Id.*) The amount of the reduction is
22 the amount by which the Government orders were inflated because of the inaccurate or
23 undisclosed information. (*Id.*) Besides any other available remedies, the penalty clause
24 further states that “the Government may terminate this contract for default.” *Id.*

25 **5. Operation of Price Reductions Clause**

26 42. The Schedule 70 solicitation also incorporates Solicitation Clause 552.238-
27 75 regulations related to price reductions. (“Solicitation” at 145-146.) This “Price

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1 Reductions Clause" (PRC) requires the offeror and contracting officer to agree on: (1) a
2 basis-of-award customer; and (2) the Government's price or discount relationship to that
3 customer. (*Id.*, *see also* GSAM § 552.238-75(a).) "Any change in the contractor's
4 commercial pricing or discount arrangement applicable to the identified customer (or
5 category of customers) which disturbs this relationship shall constitute a price reduction."
6 ("Solicitation" at 145.)

7 43. Under the terms of the PRC at GSAM § 52.238-75(c)(1), a price reduction
8 occurs if the contractor:

- 9 (i) Revises the commercial catalog, pricelist, schedule or other
10 document upon which the contract award was predicated to
11 reduce prices;
- 12 (ii) Grants more favorable discounts or terms and conditions than
13 those contained in the commercial catalog, pricelist, schedule
14 or other documents upon which the contract award was
15 predicated; or
- 16 (iii) Grants special discounts to the customer (or category of
17 customers) that formed the basis of the award, and the change
18 disturbs the price/discount relationship of the Government to
19 the customer that was the basis of the award.

20 ("Solicitation" at 145.)

21 44. When a price reduction to the benefit of the basis-of-award commercial
22 customer occurs, the contractor must offer the same price reduction to the Government,
23 with the same effective date and for the same time period; this must occur within 15 days
24 of the effective date of the price reduction. (*Id.* at 146.)

25 45. In short, a business that has products listed in a GSA Section 70 Multiple
26 Award Schedule is obligated to provide accurate and truthful information to get on the
27 schedule. Information about prices and terms offered to commercial customers is critical

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1 to this process. Once a product is on the schedule, a contractor is further required to offer
2 the Government reductions in prices consistent with offers made to commercial
3 customers. This is to ensure that the Government is receiving a “best value” sufficient to
4 justify eliminating any further full and open competition with respect to the product. 48
5 C.F.R. § 2.101.

6 **C. Other Government Procurement of Commercial Items**

7 46. Rules and procedures for acquisition of commercial items not purchased
8 through a GSA MAS are provided in FAR Part 12. *See* 48 C.F.R. §§ 12.000 *et seq.*⁶ FAR
9 Parts 13 through 15 apply those rules and procedures to particular types of contracts.
10 Relevant here are regulations related to simplified acquisitions, *see* 48 C.F.R. 48 §§
11 13.100 *et seq.*, and negotiated contracts, *see* 48 C.F.R. §§ 15.000 *et seq.*
12

13 47. The regulations define a “commercial item” as:

14 Any item, other than real property, that is of a type customarily used by the
15 general public or by non-governmental entities for purposes other than
16 governmental purposes, and –

- 17 (i) Has been sold, leased, or licensed to the general public; or
- 18 (ii) Has been offered for sale, lease, or license to the general
19 public[.]

20 48 C.F.R. § 2.101.

21 48. The regulations further define a “commercially available off-the-shelf” item
22 as a “commercial item” that is sold in the commercial marketplace “in substantial
23 quantities,” and is sold to the Government “without modification.” 48 C.F.R. § 2.101.

24 49. When seeking to purchase commercial items through means other than a
25 GSA MAS, a Contract Officer “must establish price reasonableness” before the purchase
26

27
28 ⁶ DoD acquisitions are also subject to regulations in the Defense Acquisition Regulation
Supplement (DFARS). *See* DFARS 201.104.

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1 is made. 48 C.F.R. § 12.209. That is, the “fair and reasonable” standard used for the GSA
2 MAS process also applies here, except that it applies to individual transactions.

3 50. The regulations do not allow a Contract Officer to rely on a price list or
4 catalog price as the basis for a “fair and reasonable” determination: [t]he fact that a price
5 is included in a catalog does not, in and of itself, make it fair and reasonable.” 48 C.F.R.
6 § 15.403-3(c); *see also*, 48 C.F.R. § 13.106-3(a)(2)(iii) (same).

7 51. Under the simplified acquisition process, a Contract Officer’s
8 determination that a price is “fair and reasonable” is preferably based on “competitive
9 quotations or offers,” but a Contract Officer may also use market research, price lists, or
10 “any other reasonable basis.” 48 C.F.R. § 13.106-3(a).

11 52. For negotiated contracts, a Contract Officer’s determination that a price is
12 “fair and reasonable” must be based on a “price analysis.” 48 C.F.R. § 15.403-3(c)(1).
13 The Contract Officer must document this determination with a Price Negotiation
14 Memorandum (PNM). 48 C.F.R. § 406-3(a). When a price analysis is used, the PNM
15 must include a “summary of the contractor’s proposal” in the contract file, as well as “the
16 source and type of data used to support the determination.” 48 C.F.R. § 406-3(a)(7).

17 53. At a minimum, a price analysis typically⁷ consists of obtaining “appropriate
18 data, without certification, on the prices at which the same or similar items have
19 previously been sold and determin[ing] if the data is adequate for evaluating the
20 reasonableness of the price.” 48 C.F.R. § 15.404-1(b)(1). Analysis techniques also
21 include comparing “proposed prices to historical prices paid, whether by the Government
22 or other than the Government, for the same or similar items,” as well as comparing
23 “discount or rebate arrangements.” 48 C.F.R. § 15.404-1(b)(2)(ii) and (iii).

24
25
26
27
28 ⁷ Two exceptions apply. *See* 48 C.F.R. § 15.404-1(b) (price analysis not required if prices are
based on adequate price competition or on prices set by law or regulation).

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1 **V. FACTS UNDERLYING RELATORS' CLAIMS**

2 **A. Adobe's Business**

3 54. Adobe is a United States-based multinational company.

4 55. Adobe's business is organized into three reportable segments: Digital

5 Media, Digital Experience, and Publishing. Adobe identifies Digital Media and Digital

6 Experience segments as strategic growth areas.

7 56. As shown in the chart and discussed in the paragraphs below, the Digital

8 Media and Digital Experience segments include what are designated as cloud-based

9 products offered as a Software-as-a-Service or managed services model.

Adobe Business Segments	Components
Digital Media	Adobe Creative Cloud - creative products Adobe Document Cloud - Acrobat products
Digital Experience	Adobe Experience Cloud - includes Adobe Advertising Cloud Adobe Analytics Cloud Adobe Marketing Cloud Magento Commerce Cloud
Publishing	Legacy products and services - include eLearning solutions, technical document publishing, web conferencing, document and forms platform, web application development and high-end printing

23 57. Adobe's Digital Media business generates about 70% of its total revenue.

24 Within that segment is what is called Adobe Creative Cloud, which encompasses

25 Adobe's collection of desktop and mobile apps and services for design, photography,

26 web/UX, and video. The Creative Cloud further provides templates and online services to

27 sync, store, and share files, and create apps and websites. Adobe views the Creative

28 Cloud as addressing the needs of creative professionals (e.g., artists, designers,

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1 developers, students and administrators) who use the products for such purposes as
2 publishing, web design and development, videos, mobile apps and gaming, and creation
3 of documents.

4 58. Adobe's Document Cloud business is also within the Digital Media
5 segment. It is built around the Adobe Acrobat products and integrated cloud-based
6 document services, as well as Adobe Sign for automating manual signing processes.

7 59. Adobe's Digital Experience segment generates about 27% of its total
8 revenue. This segment of Adobe's business encompasses the Experience Cloud, which
9 enables Adobe to help businesses personalize and optimize content and experience in a
10 consumer's digital interactions. It does this by providing analytics, targeting, advertising
11 optimization, digital experience management, marketing automation and engagement,
12 cross-channel campaign management, content management, asset management, audience
13 management, premium video delivery, digital commerce enablement, order management,
14 predictive intelligence and monetization. This Cloud consists of Advertising, Analytics,
15 Marketing, and Magento Commerce Clouds.

16 60. Lastly, Adobe's Publishing segment generates about 3% of its total
17 revenue. It includes what Adobe categorizes as legacy products and services, such as
18 eLearning solutions, technical document publishing, web conferencing, document and
19 forms platform, web application development and high-end printing.

20 **B. Adobe Compliance**

21 61. The "Adobe Code of Business Conduct" (Code) "outlines the principles
22 that guide [its] interactions with employees, customers, partners, stockholders, and
23 communities."⁸ The Code includes sections on conflicts of interest, fair dealing in
24 business relationships, anti-corruption compliance and compliance with the law. The
25
26
27

28 8 <https://www.adobe.com/content/dam/acom/en/corporate-responsibility/pdfs/code-of-conduct-ext.pdf> at p. 1 of 13.

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1 principles are further articulated in a series of documents that appear to be published only
2 internally.

3 62. Adobe's Code identifies all personnel as being responsible for complying
4 with the Code. It directs managers to monitor compliance and provides various means for
5 employees to report violations, including a hotline. Adobe further identifies its
6 Compliance Office as the entity responsible for maintaining and enforcing the standards
7 and procedures in the Code, including investigating potential violations.

8 63. The Code includes a specific section titled "Working with Government
9 Customers."⁹ That section recognizes that "Adobe is subject to unique requirements that
10 are considerably stricter when a government entity is our customer or ultimate end
11 customer (such as when Adobe performs as a subcontractor) than when we work with
12 commercial customers." It further references a separate U.S. Public Sector Handbook as
13 addressing specific requirements applicable to business transactions with the U.S. public
14 sector, as well as any prime contractors for any government entities.¹⁰ In addition, Adobe
15 warns employees that they are responsible for knowing any specific requirements that
16 apply to their work with a government entity.

18 **C. Adobe Sales**

19 **1. Overview**

20 64. Adobe markets and licenses its products directly through a sales force and
21 certain local offices, as well as its website at www.adobe.com.

22 65. Adobe also uses sales channels for marketing and distributing its products,
23 including distributors, retailers, software developers, systems integrators (SIs),
24 independent software vendors (ISVs), and value-added resellers (VARs). In addition,

27 ⁹ <https://www.adobe.com/content/dam/acom/en/corporate-responsibility/pdfs/code-of-conduct-ext.pdf> at § 5.4, p. 9 of 13.

28 ¹⁰The Code indicates that it is posted on Inside Adobe at <https://inside.corp.adobe.com/corporate-policies.html>.

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1 Adobe sales occur through original equipment manufacturers (OEMs) and hardware
2 bundle customers.

3 66. Adobe uses a software subscription model for the sale of a majority of its
4 products. The subscription gives customers access to a product for a specific time period,
5 and it further licenses perpetual versions of its software with maintenance and support.

6 67. For purposes of government contracting, Adobe's products are considered
7 commercial and commercial-off-the-shelf products as defined in the regulations.

8 68. The Adobe sales force was divided into several groups: financial services,
9 retail and healthcare, travel and hospitality, and public sector (government).

10 69. The sales force typically met as a whole only one time a year at an annual
11 December sales kickoff meeting. Each business unit typically had separate quarterly
12 business reviews.

13 70. The sales force responsible for government business operated separately
14 from the other groups, which were engaged in commercial sales.¹¹ The separation
15 functioned as a type of "government firewall" making it less likely that government sales
16 people would be aware of pricing deals offered to commercial customers.

17 71. Adobe provided a price list to its salespeople who work with its commercial
18 customers.¹² The list included tiers of discounting. The commercial sales people were
19 given discretion to negotiate pricing, usually up to a █% discount of the list price, but all
20 sales contracts had to go through the "deal desk" before they could be executed.
21 Generally, the commercial sales people could not exceed a █% discount, but if deals
22 were big enough, even that discount could be exceeded if the deal desk approved.

23 72. Adobe tracked its sales in a database called SalesForce. Account managers
24 who worked in Digital Experience/Marketing Cloud were trained to extract data from
25 SalesForce using a tool called "Compiled Feedback." This tool allowed the account
26

27 28¹¹ The term "commercial sales" in this Complaint refers to non-government sales.

¹² Ernst & Young regularly audited this price list.

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1 managers to extract pertinent information about contracts and renewals for which they
2 were responsible, into an easy, readable format, such as Excel. For comparison purposes,
3 Compiled Feedback also allowed an account manager to see data about other contracts
4 and renewals.

5 **2. Adobe Sales to the Government**

6 73. Adobe's SEC Form 10-K identifies the U.S. federal government as a
7 customer. However, it provides little additional information or data about its business
8 with the Government and does not indicate what proportion of Adobe's revenue is
9 derived from government sales.

10 74. A large proportion of government sales occur in the Digital Media
11 (Creative and Document Clouds) segment of Adobe's business. This is not surprising,
12 given the size of the Government and its need to utilize publications, forms, and
13 documents in its operations.

15 75. However, Adobe's website promotes the expansion of government
16 purchases in the Digital Experience/Experience Cloud. Adobe's website emphasizes use
17 of its experience-driven digital technology for public services as a means of engaging
18 government constituents in digital interactions backed by the Adobe Experience Cloud.
19 The website further emphasizes government sales related to defense and national
20 security, federal government, and state and local government, with a focus on the needs
21 of government agencies to engage the public through "exceptional digital experiences."
22 Additional web content explains purchasing options for the Government, including
23 various kinds of licensing agreements.

24 76. Third-party resellers sell most of Adobe's products to the Government.

25 77. The Federal Procurement Data System Next Generation (FPDS-NG)
26 database indicates Adobe sales to the Government amounting to \$853,386,483.38 for the
27

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1 period from January 1, 2009 through December 1, 2019.¹³ Of the 11,736 entries, 81.6%
2 have a Reference IDV (indefinite delivery vehicle) number. An IDV is a contract
3 “awarded to one or more vendors to facilitate the delivery of supply and service orders”
4 and “is established by an award from the FSS, GWAC [government wide acquisition
5 contract], BOA [basic ordering agreement], etc.”¹⁴

6 78. About half of Adobe’s sales to the Government occur through third-party
7 resellers who provide products through the GSA MAS. The table below identifies 13
8 vendors currently listed as selling Adobe products in the GSA Advantage eLibrary.¹⁵ The
9 chart below shows the amount of actual sales for each vendor for the 10-year period from
10 January 1, 2009 through October 2019.¹⁶ The chart is based on an FPDS-NG search using
11 the DUNS number of each reseller and “Adobe.” The column stating “Date of First
12 Sale/Date Signed” provides the date of the initial transaction with that particular reseller,
13 and thus indicates the length of its relationship with Adobe.
14

15 **Resellers of Adobe Products – 1/1/2009-9/24/2019**

DUNS #	Schedule Contractor	All Contract #'s Total Sales since 2009	Sale Dates 2009 - Present	Date of First Sale/Date Signed	Last FPDS Search Date
619645745	American Business Solutions, Inc.	No Sales Found	N/A	N/A	N/A
132646675	Arrow Micro Corp.	(\$21,201.70)	01/16/2019	08/17/2010	10/03/2019

23
24 ¹³ This amount was derived from a November 27, 2009 search using “Adobe” as the keyword,
25 limiting the time from to January 1, 2009 to the present, and calculating the sum of the “Action
26 Obligation” field (Column F).
27

¹⁴ https://www.fpds.gov/help_V1_0/Indefinite_Delivery_Contract.htm

¹⁵ <https://www.gsaelibrary.gsa.gov/ElibMain/mfrList.do?scheduleNumber=70&searchMethod=au>
tonomy

28 ¹⁶ This list may underrepresent sales because it only captures transactions where “Adobe”
appears in the data for the transaction.

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1	DUNS #	Schedule Contractor	All Contract #'s Total Sales since 2009	Sale Dates 2009 - Present	Date of First Sale/Date Signed	Last FPDS Search Date
2	88365767	Carahsoft Technology Corporation	\$207,066,885.45	01/07/2009 - 10/07/2019	03/01/2001	10/08/2019
3	026157235	CDW Government LLC	\$136,147,230.78	01/07/2009 - 09/27/2019	04/09/2003	10/03/2019
4	877936518	Dell Marketing L.P.	\$17,183,992.56	02/17/2009 - 05/08/2019	05/12/2016	10/08/2019
5	134898316	EC America, Inc.	No Sales Found	N/A	06/30/2004	N/A
6	781797712	Emergent, LLC	\$96,797,377.10	04/10/2009 - 09/03/2019	10/01/2007	10/8/2019
7	809678782	Gov- connection Inc.	\$5,933,185.21	01/22/2009 - 09/04/2019	03/22/2004	10/08/2019
8	159776806	Insight Public Sector, Inc.	\$12,468,211.72	02/02/2009 - 06/13/2019	10/20/2003	10/03/2019
9	25155135	Amananet, Inc.	No Sales Found	N/A	N/A	N/A
10	611429481	Shi Internationa l Corp.	\$13,062,556.90	03/10/2009 - 09/03/2019	06/26/2006	10/03/2019
11	166903521	Computer Solutions East, Inc.	No Sales Found	N/A	N/A	N/A

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1	DUNS #	Schedule Contractor	All Contract #'s Total Sales since 2009	Sale Dates 2009 - Present	Date of First Sale/Date Signed	Last FPDS Search Date
2	129365420	PCMG, INC.	\$541,768.40	01/22/2009 - 04/11/2019	07/07/2005	10/03/2019
3	TOTAL: \$489,180,006.42					
4						
5						
6						
7						
8	79. The FPDS-NG data above shows that Defendants Carahsoft, CDW-G, and					
9	Emergent are, respectively, the three largest third-party resellers for Adobe in terms of					
10	dollars.					
11						
12	80. Although government purchases in the FPDS system were often listed as					
13	sold by resellers to the Government, those deals were typically first negotiated by Adobe					
14	sales persons, and then approved by Adobe. That is, Adobe controlled the pricing. Once					
15	the deal was negotiated and approved, the contract terms were handed over to a reseller					
16	partner such as Carahsoft, which then completed the transaction with the government					
17	entity making the purchase.					
18						
19	3. Direct Sales to Federal Government					
20	81. Adobe has its own DUNS number: 102096559. For the time period					
21	January 1, 2009 through November 30, 2019, the FPDS-NG database shows 82					
22	transactions directly involving Adobe as the “vendor.” Those transactions involve					
23	multiple NAICS numbers and multiple agencies. The “action obligation” total amount of					
24	those transactions for that time period is \$5,481,136.31.					
25						
26	D. Relators’ Knowledge of Adobe’s Government Sales Practices					
27	82. In April 2014, Relator Scott Hagen began working at Adobe as a Client					
28	Success Manager. Two years later (February 2016), he was promoted to Senior Client					
	Success Manager. He held that title until he left Adobe in February of 2018. At Adobe,					
	Hagen was a main executive point of contact for retail Digital Experience/Marketing					

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1 Cloud customers and was responsible for growing and ensuring customer satisfaction
2 with their use of highly sophisticated Adobe products across various customer business
3 units and organizations. A significant component of Relator Hagen's position involved
4 working with customers' renewal of their contracts with Adobe.

5 83. Relator Kevin Klimaszewski, was a Senior Enterprise Account Executive in
6 Adobe's Digital Marketing Retail Business Unit for five years, from April 2010 to April
7 2015. In this position Klimaszewski sold high-end analytics to commercial customers.
8 His tenure at Adobe overlapped Relator Hagen's for about a year (April 2014-April
9 2015), and Hagen supported Klimaszewski's post-sales work.
10

11 1. **Adobe Failed to Ensure the Government Received "Fair and
12 Reasonable" Pricing as Compared to Commercial Customers**

13 84. Relators were familiar with the principle that companies doing business
14 with the Government had to treat it fairly in terms of pricing. In conjunction with this
15 principle, they understood that sales operations/compliance personnel (e.g. "deal desk")
16 should typically check commercial sales proposals against amounts charged for
17 government sales to be sure that commercial customers were not treated more favorably
18 than the government.

19 85. In conjunction with his job, Relator Hagen had access to the "Compiled
20 Feedback" tool which allowed him access to information about Adobe Marketing Cloud
21 contracts going back multiple years, including links to government contracts in
22 SalesForce. He reviewed prior contracts in Compiled Feedback to see how Adobe had
23 priced a particular product to various customers.

24 86. When reviewing prior contracts, Relator Hagen noticed, in particular, that
25 Adobe had not given the Government discounts that commercial customers routinely
26 received, resulting in the Government paying significantly higher prices for products than
27 those commercial customers.
28

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1 87. Relator Hagen further compared the prices for Adobe products on the GSA
2 Schedule 70 with those offered to commercial customers and noted that prices for
3 commercial customers were substantially discounted as compared to the GSA schedule.
4 He observed that these discrepancies occurred on the Digital Experience side of the
5 business where he worked, but were even more pronounced on the Digital
6 Media/Creative Cloud side of the business, which represents about 70% of Adobe's
7 business.

8 88. Relator Hagen consulted with Relator Klimaszewski, whose observations
9 of how Adobe did business with the Government was consistent with Relator Hagen's.
10 Based on positions he held before working at Adobe, Relator Klimaszewski assumed that
11 companies, including Adobe, were obligated to give the Government pricing
12 opportunities like those offered in the commercial sphere.

14 89. In the five years that Relator Klimaszewski worked at Adobe, he never
15 observed this process happening at Adobe with respect to government pricing. He was
16 never asked whether any of his deals involved the Government. He was never told that
17 his deals could not go lower than pricing offered to the Government. This included work
18 in both the Marketing and Creative Clouds.

19 90. Relator Klimaszewski was also aware that, even where third-party resellers
20 were involved, Adobe sales persons negotiated the government deals and received Adobe
21 approval for those deals. Adobe then turned over the transaction for the third-party
22 reseller to execute the sale.

23 91. Neither Relator was aware that Adobe gave any sales persons training on
24 whether and how government pricing impacted the prices they could negotiate with
25 commercial customers.

26 92. Neither Relator observed any instance where commercial pricing resulted in
27 a refund to a government customer that had been charged a higher price for a product
28 than a commercial customer.

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1 **2. Adobe Charged the Government Higher Prices than Charged to**
2 **Commercial Customers for the Same Products**

3 93. Below are examples of sales demonstrating that Adobe sold products and
4 services to the Government at prices higher than those offered to commercial customers.

5 **a. Adobe Analytics (Digital Experience Segment)**

6 94. Adobe Analytics products provide “reporting, visualizations, and analysis
7 of Customer Data that allows Customers to discover actionable insights.”¹⁷ Pricing is
8 primarily based on “server calls,” which mean “each page view, exit link, download,
9 customer link, or other event on the Customer Site(s) to the extent that Customer tags,
10 allows to be tagged, or causes to be tagged such page views, exit links, downloads,
11 custom links, and other events for purposes of accessing and using Adobe Analytics.”¹⁸

12 95. The Adobe Analytics products are generally purchased through an annual
13 contract providing for a designated number of server calls per month. Typically, with
14 retail/commercial customers the rate decreased when the allowed volume of server calls
15 increased.¹⁹ When a contract was due for renewal, additional negotiations occurred based
16 on the prior year’s volume. Sometimes those negotiations included adjustments for the
17 subsequent year based on the accuracy of the estimation of calls compared to the actual
18 usage of them.

19 96. Carahsoft sells Adobe Analytics: OD (SKU 38051945) through GSA
20 Advantage, which lists the following prices based on quantity of calls purchased:

21
22
23
24
25
26
27 ¹⁷ <https://helpx.adobe.com/legal/product-descriptions/adobe-analytics.html>

28 ¹⁸ *Id.*

29 ¹⁹ Renewal of the contract includes an evaluation of volume usage, with adjustments/negotiations
30 based on whether usage is flat or over/under the contracted call volume.

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1 **Table 1 - GSA Advantage Carahsoft Listings for Adobe Analytics OnDemand**

Qty/Millions/Billions	Unit Price per Million per Month	Annual Price	SKU
1-1.5 M calls per month	\$2,431	\$29,168.25	38051945.1
1.5-2 M calls per month	\$1,728	\$31,104.11	38051945.15
2-2.5 M calls per month	\$1,393	\$33,442.35	38051945.2
2.5-5 M calls per month	\$1,994	\$59,815.61	38051945-2.5
5-10 M calls per month	\$1,468	\$88,092.08	38051945.5
10-13.5 M calls per month	\$744	\$89,266.65	38051945.10
13.5-35 M calls per month	\$1,276	\$206,690.14	38051945-13.5
35-50 M calls per month	\$527	\$221,317.78	38051945-35
50-75 M calls per month	\$485	\$291,193.30	38051945-50
75-100 M calls per month	\$372	\$334,967.45	38051945-75
100-150 M calls per month	\$377	\$451,879.80	38051945-100
150-200 M calls per month	\$289	\$519,852.09	38051945-150
200-300 M calls per month	\$292	\$701,474.05	38051945-200
300-500 M calls per month	\$281	\$1,011,427.71	38051945-300
500 M – 1 B calls per month	\$283	\$1,696,588.41	38051945-500
1-2 B calls per month	\$227	\$2,718,891.69	38051945-1000
2 B+ calls per month	\$190	\$4,567,738.04	38051945-2000

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1 97. The table below shows SalesForce data for two commercial purchases of
2 the same analytics product. The commercial customers paid prices per unit substantially
3 smaller than those listed on the FSS for government purchasers. In fact, even if the
4 government purchased up to 2 billion calls, its listed unit price (\$226) was higher than the
5 commercial entities paid for far fewer calls.
6

7 **Table 2 – Adobe Analytics: OD (SKU 38051945) – Actual Commercial Sales**

Entity Start/End Date	Qty (Millions/Billio ns	Unit Price per Million per month	Annual Price	SKU
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945

15 Comparing the price for government sales from 75-100 million calls per month (\$372)
16 with the two commercial prices, which were in the same category for quantity, the
17 differences are:
18

- 19 [REDACTED] The government price was [REDACTED]
20 [REDACTED] as [REDACTED] paid.
- 21 [REDACTED] The government price was almost [REDACTED]
22 than [REDACTED] paid.

23 98. Additional contracts for Adobe Analytics that were comparable in volume
24 and time frame also demonstrate significant price differentials between sales to the
25 Government and commercial customers.

26 99. Tables 3 and 4 below show sales of Adobe Analytics: OD [On Demand]
27 (SKU 38041945). All of the involved government contracts were sold through Carahsoft,
28 although, as discussed in paragraphs 80 and 90 above, Adobe sales personnel negotiated

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1 the contracts, which Carahsoft then executed. The tables show that the Government was
2 paying more per million calls than commercial entities, even when purchasing more
3 server calls. Put another way, the Government received discounts in a significantly
4 smaller proportion than commercial customers did.

5
6 **Table 3 - Adobe Analytics: OD (SKU 38051945) – Actual Government Sales**

7	Entity Start/End Date	8 Qty/ Millions	9 Unit Price per Million per Month	10 Annual Price	11 SKU	12 Contract
13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38051945	[REDACTED]

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1 **Table 4 - Adobe Analytics: OD (SKU 38051945) – Actual Commercial**
2 **Sales**

3 Entity 4 Start/End Date	5 Qty/ 6 Millions	7 Unit 8 Price 9 per 10 Million 11 per 12 Month	13 Annual 14 Price	15 SKU	16 Contract
██████████	████	████	██████████	38051945	██████████
██████████	████	████	██████████	38051945	██████████

13 100. Tables 5 and 6 below show sales of Adobe Analytics Standard with SKU
14 3804932, which is essentially the same product as SKU 38041945. These government
15 purchases also occurred through Carahsoft. The tables show that the Government paid
16 more per million calls than commercial customers even when purchasing more server
17 calls. As with SKU 38041945, the Government discounts were significantly smaller than
18 those offered to commercial customers.

19
20 **Table 5 -Adobe Analytics Standard (SKU 38049432) – Actual Government Sales**
21

22 Entity 23 Start/End Date	24 Qty/ Millions	25 Unit Price 26 per 27 Million 28 per Month	29 Annual 30 Price	31 SKU	32 Contract
██████████	████	████	██████████	38049432	██████████
██████████	████	████	██████████	38049432	██████████

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2

3 Entity 4 Start/End Date	5 Qty/ 6 Millions	7 Unit Price 8 per 9 Million 10 per Month	11 Annual 12 Price	13 SKU	14 Contract
15 [REDACTED]	16 1	17 [REDACTED]	18 [REDACTED]	19 38049432	20 [REDACTED]
21 [REDACTED]	22 1	23 [REDACTED]	24 [REDACTED]	25 38049432	26 [REDACTED]
27 [REDACTED]	28 1	29 [REDACTED]	30 [REDACTED]	31 38049432	32 [REDACTED]
33 [REDACTED]	34 1	35 [REDACTED]	36 [REDACTED]	37 38049432	38 [REDACTED]
39 [REDACTED]	40 1	41 [REDACTED]	42 [REDACTED]	43 38049432	44 [REDACTED]
45 [REDACTED]	46 1	47 [REDACTED]	48 [REDACTED]	49 38049432	50 [REDACTED]
51 [REDACTED]	52 1	53 [REDACTED]	54 [REDACTED]	55 38049432	56 [REDACTED]
57 [REDACTED]	58 1	59 [REDACTED]	60 [REDACTED]	61 38049432	62 [REDACTED]

27 101. For the purchases in Tables 3 and 5 above, the Government paid less per
28 million calls than the price for that quantity shown in the GSA Advantage listing in Table
1. However, to the extent that some discounting occurred for the Government, the

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1 discounts were not as deep as those offered commercial customers. All of these purchases
2 occurred through Carahsoft.

3 102. Another way that Adobe favored commercial customers over the
4 Government was that Adobe would roll several “accounts” into one contract for larger
5 customers, thereby providing a basis to sell the product at a much lower price based on
6 volume. In contrast, Adobe tended to write single contracts for individual government
7 projects, thus depriving the Government of larger volume pricing.

8 103. When commercial customers had experienced an overage of server calls in
9 a prior year, it was common for Adobe to [REDACTED]

10 [REDACTED]
11 Relator Hagen is not aware that Adobe disclosed or offered [REDACTED] to
12 the Government.

13 b. **Access Training Pass-Named User (SKU 38052384)
(Digital Experience Segment)**

14 104. The Access Training Pass-Named User (SKU 38052384) authorized a
15 single named user “to enroll and attend an unlimited number of public virtual or regional
16 classroom training courses” during the relevant period at a list price of \$ [REDACTED] per person
17 per year. As of November 17, 2019, Carahsoft sold this product on GSA Advantage for
18 \$4,785.89. This is a discount of \$ [REDACTED] or [REDACTED] %.

19 105. Table 7 below shows sales of the Access Training Pass-Named User in FY
20 2017, including four government sales. Of the transactions for FY 2017, three
21 government agencies directly purchased the pass at \$ [REDACTED]. Of the 21 transactions that
22 were less than \$ [REDACTED], only one involved a government agency, which purchased the
23 product through Carahsoft. The discount for that agency was minimal and the smallest of
24 the 21. The second lowest discount was for an entity that is an eligible GSA user. The
25 discounted transactions for commercial purchasers had significantly higher discounts,
26 which do not appear to be related to the number of passes purchased.

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2 **Table 7 - Access Training Pass-Named User (SKU 38052384) – Actual Government
3 and Commercial Sales**

4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Government (G) Commercial (C) ²⁰	Actual Sale Price (list price: [REDACTED])	Amount of Discount per Pass	Number of Passes Purchased in Transaction	Number of Transactions
	G [REDACTED] ([REDACTED])	[REDACTED]		1	1
	G ([REDACTED] [REDACTED])	[REDACTED]		1	1
	G [REDACTED] [REDACTED]	[REDACTED]		1	1
	C	[REDACTED]	[REDACTED]	2	1
	C	[REDACTED]	[REDACTED]	1	5
	C	[REDACTED]	[REDACTED]	2	1
	C	[REDACTED]	[REDACTED]	3	3
	C	[REDACTED]	[REDACTED]	5	1
	C	[REDACTED]	[REDACTED]	6	2
	C	[REDACTED]	[REDACTED]	2	1
	C	[REDACTED]	[REDACTED]	4	1
	C	[REDACTED]	[REDACTED]	7	1
	C	[REDACTED]	[REDACTED]	1	1

²⁰ Relator can identify the commercial customers, on request.

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To 31 U.S.C. §3730(b)(2)**

1	Government (G) Commercial (C) ²⁰	Actual Sale Price (list price: \$ [REDACTED])	Amount of Discount per Pass	Number of Passes Purchased in Transaction	Number of Transactions
2	C	[REDACTED]	[REDACTED]	2	1
3	C	[REDACTED]	[REDACTED]	15	1
4	Eligible GSA User	[REDACTED]	[REDACTED]	1	1
5	G ([REDACTED])	[REDACTED]	[REDACTED]	3	1

c. AEM Mobile (SKU 10006362/38052698) (Digital Experience Segment)

106. The Adobe Experience Manager (AEM) Mobile (SKU 10006362/38052698²¹) is a solution for building and managing enterprise mobile apps.²² It is sold on a base unit per year basis.

107. Carahsoft sells the AEM Mobile product with SKU 38052698 through GSA Advantage at a price of \$135,944.58. The product is described as: "Adobe Experience Manager Mobile Single- Single App License – 12 Month Term." Carahsoft also sells an AEM Mobile OnPremise Single App License – 12 Months with SKU 38052698JA²³ for the same price.

108. Tables 8 and 9 below show sales of AEM Mobile base unit, including two sales to the Government. These government purchases occurred through Carahsoft. As

²¹ In Compiled Feedback, the SKU was typically 10006362, but, in at least one instance, appeared as 38052698 in SalesForce.

²² <https://www.adobe.com/content/dam/acom/en/marketing-cloud/enterprise-content-management/pdfs/54658.en.aem-mobile.brief.using-aem-content-management.pdf>

²³ With the On-Premises option the customer uses its own server.

<https://www.adobe.com/content/dam/acom/en/security/pdfs/aem-mobile-security-overview.pdf> at 2.

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1 shown in Table 9, at least seven commercial customers purchased the same product at a
2 much deeper discount.
3

4 **Table 8 – AEM Mobile: OPT Single (SKU 1006362/387052698)**
5 – Actual Government Sales

6 Entity	7 Amount Per Unit	SKU	Contract
8 [REDACTED]	[REDACTED]	10006362	[REDACTED]
9 [REDACTED]	[REDACTED]	38052698	[REDACTED]

11
12 **Table 9 – AEM Mobile: OPT Single (SKU 1006362/387052698)**
13 – Actual Commercial Sales

14 Entity	15 Amount Per Unit	SKU	Contract
16 [REDACTED]	[REDACTED]	10006362	[REDACTED]
17 [REDACTED]	[REDACTED]	38052698	[REDACTED]
18 [REDACTED]	[REDACTED]	10006362	[REDACTED]
19 [REDACTED]	[REDACTED]	38052698	[REDACTED]
20 [REDACTED]	[REDACTED]	10006362	[REDACTED]
21 [REDACTED]	[REDACTED]	10006362	[REDACTED]
22 [REDACTED]	[REDACTED]	10006362	[REDACTED]
23 [REDACTED]	[REDACTED]	10006362	[REDACTED]

24
25 109. For the purchases in Table 8 above, the Government paid less per unit than
26 the price provided in the GSA Advantage listing. However, commercial customers paid
27 even less per unit than the Government.
28

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d. Premium Service –SW (SKU 38051853) (Digital Experience Segment)

110. Adobe's Premium Service –SW (SKU 38051853) provides the services of a Technical Account Manager (TAM) for one year at a list price of \$ [REDACTED]/year. GSA Advantage lists three sellers of this SKU at essentially the same price, about \$57,450: Defendant Carahsoft (\$57,454.91), EC America, Inc. (\$57,430.73), and Defendant Emergent, LLC (\$57,460.96).

111. In the time period of 2013-2014, commercial customers were often given this resource for free. However, by mid-2015, a business decision was made to routinely charge for this service and to sell it more vigorously.

112. Tables 10 and 11 below identify 17 contracts booked and sold for less than the list price per year. Of these 17 contracts, three were with government agencies that purchased through Carahsoft and paid the GSA price (or more). Of the remaining 14 contracts, only one commercial customer paid more than the GSA price, and 13 paid less.

Table 10 - Premium Service –SW (SKU 38051853) – Actual Government Sales

Entity	Price per Year	Service End Date
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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Table 11 - Premium Service –SW (SKU 38051853) – Actual Commercial Sales

113. Adobe also engaged in other arrangements that had the effect of giving commercial customers this service at a discounted or free price. For example, in an invoice for one commercial customer, the Premium Service-SW was shown as booked at its list price. However, a review of the entire contract shows discounts on another SKU that added up to the price of the Premium Service-SW. Communications relating to this

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1 negotiation made it clear that the intent of the one-time discounts was to provide the
2 service free for a year.

3

4 **e. Creative Cloud Enterprise All MLP SW Subscription
5 Only (SKU 65227749/65257924/10006960) (Digital Media
6 Segment)**

7

8

9

10

11

12 114. The Creative Cloud Enterprise All MLP SW Subscription Only (SKU
13 65227749/65257924/10006960) is a subscription to use multiple products in the Creative
14 Cloud for one year. The first two SKUs are essentially the same, except for differences
15 relating to billing frequency, service, and storage levels. The third SKU is a similar, but
16 better product. None of the three SKUs discussed in this section is listed on GSA
17 Advantage.

18

19 115. Tables 12 and 13 below identify four contracts under SKU 65227749.
20 Although the government customer purchased many more units, it received no discount
21 when compared to commercial customers, and in fact paid a price per unit slightly higher
22 than commercial customers that purchased far fewer units.

17 **Table 12 – Creative Cloud Ent ALL MLP SW Subscription Only Mun 1S
18 Complete 2G (SKU 65227749) – Actual Government Sale**

Entity	Qty	Unit Price	Total Price	Dates
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

23

24 **Table 13 – Creative Cloud Ent ALL MLP SW Subscription Only Mun 1S
25 Complete 2G (SKU 65227749) – Actual Commercial Sales**

Entity	Qty	Unit Price	Total Price	Dates
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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 2 To 31 U.S.C. §3730(b)(2)

1	Entity	Qty	Unit Price	Total Price	Dates
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4
 5
 6 116. Tables 14 and 15 below identify four contracts under SKU 65257924.
 7 Although the government customer purchased purchased many more units units in each
 8 of the contracts, it paid a substantially higher price per unit than the commercial entity
 9 that purchased far fewer units.
 10

11 **Table 14 - Creative Cloud Ent ALL MLP SW Subscription Only ALL 1S**
 12 **Complete 2G (SKU 65257924) – Actual Government Sales**

13	Entity	Qty	Unit Price	Total Price	Dates
14	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

21
 22 **Table 15 - Creative Cloud Ent ALL MLP SW Subscription Only ALL 1S**
 23 **Complete 2G (SKU 65257924) – Actual Commercial Sale**

24	Entity	Qty	Unit Price	Total Price	Dates
25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
26					

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1 117. Adobe's product with SKU 10006960, Creative Cloud Ent All MLP SW
2 Subscription Only Mun 1S Enterprise, is a similar but better product than the SKUs in
3 Tables 12-15 above. Adobe had a 3-year contract with a commercial customer that was
4 charged a smaller or equivalent price for a better product when it purchased only a few
5 units per year. The government entities identified in Tables 12-15 purchased hundreds of
6 units of a lesser product but paid a higher or equivalent price per unit.

8 **Table 16- Creative Cloud Ent ALL MLP SW Subscription Only MUN 1S**
9 **Enterprise (SKU 10006960)) – Actual Commercial Sale**

10 Entity	11 Qty	12 Unit 13 Price	14 Total Price	15 Dates
16 [REDACTED]	17 [REDACTED]	18 [REDACTED]	19 [REDACTED]	20 [REDACTED]
21 [REDACTED]	22 [REDACTED]	23 [REDACTED]	24 [REDACTED]	25 [REDACTED]
26 [REDACTED]	27 [REDACTED]	28 [REDACTED]	29 [REDACTED]	30 [REDACTED]

18 **3. Adobe Violated the False Claims Act**

19 118. As shown above, the differences in what the Government paid for Adobe
20 products are substantial when compared to commercial customers.

21 119. Adobe is a sophisticated company, with a Code of Business Conduct that
22 acknowledges that "Adobe is subject to unique requirements that are considerably stricter
23 when a government entity is our customer or ultimate end customer (such as when Adobe
24 performs as a subcontractor) than when we work with commercial customers." That Code
25 further admonishes employees that they are responsible for knowing any specific
26 requirements that apply to their work with a government entity.

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To 31 U.S.C. §3730(b)(2)**

1 120. Adobe has the resources to be well-acquainted with its obligations under
2 the GSA MAS regulations to (1) provide truthful pricing information to the Government
3 at the outset of its contractual relationships; (2) inform the Government when it provides
4 concessions or discounts to comparable basis-of-award customers that should also be
5 given to the Government; (3) provide the same concessions and discounts to the
6 Government as it gives to its comparable basis-of-award customers; and (4) refund
7 overcharges to the Government as required by the regulations.

8 121. Adobe also has the resources to be well-acquainted with its obligations
9 when negotiating individual contracts with the Government, specifically to provide the
10 Government with truthful and complete information about pricing, discounts,
11 concessions, and anything else required by the Government for its price analysis and
12 ultimate determination whether a price is “fair and reasonable.”

14 122. Relators’ experience was that, among other things, Adobe (1) made little or
15 no effort to monitor commercial pricing to ensure that price reductions were provided to
16 the Government; (2) provided little, if any, any training to its sales personnel about the
17 impact of commercial pricing on government sales; (3) did not refund overcharges to the
18 Government when a relevant commercial customer was given a discount or concession;
19 and (4) effectively siloed its government sales force from the operations of its
20 commercial sales force, in effect, making it unlikely that sales people in government and
21 non-government sales would be aware of pricing discrepancies between those customer
22 groups.

23 123. Relator Hagen further became aware of significant examples, provided
24 above, where the Government paid highly inflated prices for Adobe products when
25 compared to comparable sales to commercial customers.

26 124. The facts in the above paragraphs, and throughout this Complaint indicate
27 that Adobe knowingly overcharged the Government for products sold at significantly
28 lesser prices to commercial customers, or at least, acted with deliberate ignorance and/or

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To 31 U.S.C. §3730(b)(2)**

1 reckless disregard of the truth or falsity of information provided to the Government
2 related to the pricing of its products.

3 125. This conduct is equally egregious and illegal whether Adobe provided
4 inflated prices directly to the Government or through information provided to third-party
5 resellers.

6 126. Defendants Carahsoft, CDW-G, and Emergent, are highly experienced
7 third-party resellers to the Government. As shown above in paragraph 78, each of them
8 has sold Adobe products through the GSA MAS for more than a decade (Carashoft sales:
9 \$207,066,885.45; CDW-G sales:\$136,147,230.78; Emergent sales: \$96,797,377.10).
10 Accordingly, none of them can claim ignorance of their obligations to provide the
11 Government with prices that are fair and reasonable as compared to commercial
12 customers. To the extent that Carahsoft, CDW-G, and Emergent, when selling to
13 government entities, allowed Adobe to negotiate prices for sales that were not fair and
14 reasonable as compared to commercial customers, and to the extent that Carahsoft,
15 CDW-G, and Emergent turned a blind eye to Adobe's reduced commercial sales prices,
16 and the obligations that concessions and reductions placed on third-party resellers to the
17 Government—each of them is also liable for fraudulent sales and failure to refund
18 because their conduct was at least reckless or deliberately indifferent, if not knowing.

19 127. “[P]rice is an unambiguously material condition under the FCA.” *United*
20 *States ex rel. Bierman v. Orthofix Int'l, NV.*, 177 F. Supp. 3d 712, 715 (D. Mass. 2016)
21 (*citing United States ex rel. Shemesh v. CA, Inc.*, 89 F. Supp. 3d 36, 51 (D.D.C. 2015)). If
22 Defendants had disclosed steeply discounted prices for Adobe products offered to non-
23 government, best-of-award customers, this disclosure would have affected the
24 Government's determination of whether the price offered to the Government for the same
25 products in comparable quantities was fair and reasonable. Moreover, the Government
26 would have purchased the lower-priced products if they were offered.
27
28

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To 31 U.S.C. §3730(b)(2)**

128. By their conduct, Defendants deprived the Government of the ability to arrive at a fair and reasonable price for its purchase of Adobe products, and instead submitted or caused to be submitted claims for those products with inflated prices.

129. Because of Defendants' fraudulent conduct, the Government overpaid significantly when it purchased Adobe products that Adobe offered to commercial customers for far less money. The Government was further damaged whenever Defendants did not refund a price concession or refund that it offered to a non-government, best-of-award customer.

130. Thus, the Government paid more for those products than it would have if Defendants had provided truthful and complete information about its sales to commercial customers.

Count I: Federal FCA, 31 U.S.C. § 3729(a)(1)(A)

131. Relators reallege each and every paragraph of this Complaint.

132. Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1)(A).²⁵

133. As a result of the Defendants' actions, the United States has been, and may continue to be, severely damaged.

Count II: Federal FCA, 31 U.S.C. § 3729(a)(1)(B)

134. Relators reallege each and every paragraph of this Complaint.

135. Defendants, in reckless disregard or deliberate ignorance of the truth or falsity of the information involved, or with actual knowledge of the falsity of the information, knowingly made, used, or caused to be made or used false records or

²⁵ To the extent that illegal conduct occurred prior to May 20, 2009, this Complaint should be deemed to include violations of the federal False Claims Act prior to its amendment in 2009. Specifically Count I therefore also alleges violations of 31 U.S.C. § 3729(a)(1).

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To 31 U.S.C. §3730(b)(2)**

1 statements material to the payment of false or fraudulent claims, in violation of 31
2 U.S.C. § 3729(a)(1)(B).²⁶

3 136. The United States, unaware of the falsity of the claims and/or statements
4 made by Defendants, and in reliance on the accuracy of these records or statements, paid
5 false or fraudulent claims.

6 137. As a result of Defendants' actions, the United States has been, and may
7 continue to be, severely damaged.

8 **Count III: Federal FCA, 31 U.S.C. § 3729(a)(1)(G)**

9 138. Relators reallege each and every paragraph of this Complaint.

10 139. As detailed above, Defendants knowingly made, used, and/or caused to be
11 made or used, false records or statements material to an obligation to pay or transmit
12 money or property to the Government, and/or knowingly concealed or knowingly and
13 improperly avoided or decreased an obligation to pay or transmit money or property to
14 the Government, in violation of 31 U.S.C. § 3729(a)(1)(G).²⁷

15 140. As a result of Defendants' actions, the United States has been, and may
16 continue to be, severely damaged.

17 **PRAYER FOR RELIEF**

18 19 **WHEREFORE**, Plaintiff/Relators Scott Hagen and Kevin Klimaszewski request
20 that this Court:

21 A. Enter judgment for the United States Government and the
22 Plaintiffs/Relators and against Defendants;

23
24
25 ²⁶ To the extent that illegal conduct occurred prior to May 20, 2009, this Complaint should be
26 deemed to include violations of the federal False Claims Act prior to its amendment in 2009.
27 Specifically Count II therefore also alleges violations of 31 U.S.C. § 3729(a)(2).

28 ²⁷ To the extent that illegal conduct occurred prior to May 20, 2009, this Complaint should be
deemed to include violations of the federal False Claims Act prior to its amendment in 2009.
Specifically Count III therefore also alleges violations of 31 U.S.C. § 3729(a)(7).

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To 31 U.S.C. §3730(b)(2)

B. Order Defendants to cease and desist from violating the False Claims Act, 31 U.S.C. § 3729 *et seq.*;

C. Award the United State Government three times the amount of the actual damages sustained by the government as a result of Defendants' violations of the False Claims Act as alleged in this Complaint;

D. Assess civil penalties in the maximum amount available against the Defendants for each and every false claim. Defendants submitted to the United States government in connection with the false statements and false claims alleged in this Complaint;

E. Award Relators the maximum "relator's share" allowed pursuant to 31 U.S.C. § 3730(d);

F. Award prejudgment interest;

G. Award Relators statutory attorney's fees, costs, and expenses pursuant to 31 U.S.C. § 3730(d);

H. Grant such other relief as the Court may deem just, necessary, and proper.

DEMAND FOR JURY TRIAL

Relators hereby demand a trial by jury.

Dated: January 8, 2020

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